

Vinson&Elkins

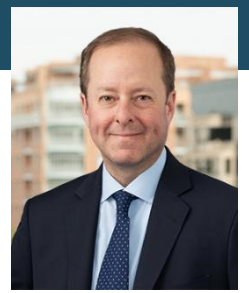
Navigating

Sixth Annual Navigating the Annual Meeting and Reporting Season Program

November 11, 2026

Sixth Annual Navigating the Annual Meeting and Reporting Season Program

Today's Panelists



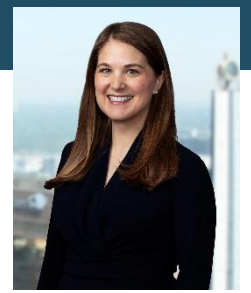
Alex Bahn
Partner, Vinson & Elkins
Washington, DC



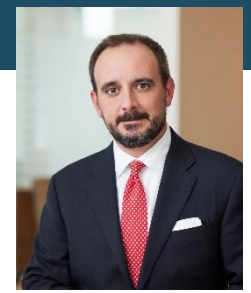
Rebecca Baker
Partner, Vinson & Elkins
Houston



Marc Cunningham
Global Managing Director, Texas Stock Exchange
Dallas



Katherine Frank
Partner, Vinson & Elkins
Dallas



Jeff Johnston
Partner, Vinson & Elkins
Houston



Robert Kimball
Partner, Vinson & Elkins
Dallas



James McGovern
Partner, Vinson & Elkins
New York



Jon Solorzano
Partner, Vinson & Elkins
Los Angeles



Jessica Strine
CEO, Jasper Street Partners
Pennsylvania



Mike Telle
Partner, Vinson & Elkins
Houston



Sebastian Tiller
Partner, Vinson & Elkins
New York

©2026 Vinson & Elkins LLP **velaw.com**

Table of Contents

Sixth Annual Navigating Annual Meeting and Reporting Season Program	
Overview	04
Proxy Season Debrief & Shareholder Engagement	09
Ethics & Enforcement	13
Y'all Street is Open for Business	53
SEC Updates	56
Governance: CEO Transitions	74
V&E Client Alerts	79

©2026 Vinson & Elkins LLP **velaw.com**

Reminders and Developments

	Reminders from Fifth Annual Program
☐	EDGAR Next
☐	Climate-Related Disclosures – ***Stayed***
	Developments Since Fifth Annual Program
☐	Exchanges Launching 23/5 Trading
☐	SEC's Innovation Exemption for Tokenized Stock
☐	Foreign Private Issuer Section 16 Reporting (Related Exemptive Order March 5, 2026)
☐	California Greenhouse Gas Reporting Laws

SEC has not changed the content requirements for periodic reports, interim reports or proxy statements

©2026 Vinson & Elkins LLP **velaw.com**

Significant SEC and Staff Guidance

	Guidance	Release Date
☐	Rule 14a-13 Broker Search Timing Flexibility	January 23, 2026
☐	Joint Division Statement on Tokenized Securities	January 28, 2026
☐	SEC and CFTC Interpretive Release on Crypto Assets	March 17, 2026
☐	Exemptive Order: Equity Tender Offer Minimum Period Shortened to 10 Business Days in Some Cases	April 16, 2026
☐	Exemptive Order: Non-Convertible Debt Tender Offer Minimum Period Shortened to 5 Business Days in Some Cases	June 30, 2026
☐	Corporation Finance Will Not Respond to 14a-8 No-Action Letters	August 14, 2026
☐	13(d) and 13(g) Beneficial Ownership CFIs	September 2, 2026
☐	FAQs on the Application of Securities Laws to Crypto Assets	September 25, 2026 (update September 28, 2026)
☐	Retail Voting Program No-Action Letters: Goldman Sachs,Tesla, Funds and BDCs	September 28-29, 2026 (CFIs October 8, 2026)

©2026 Vinson & Elkins LLP velaw.com

Proposed Rulemaking

	Proposed Rule or Concept Release	Release Date
☐	Foreign Private Issuer Definition Concept Release	June 4, 2025
☐	Optional Semiannual Reporting	May 5, 2026
☐	Registered Offering Reform	May 19, 2026
☐	Filer Status and Accommodations	May 19, 2026
☐	Rescission of Climate-Related Disclosure Rules	May 29, 2026
☐	Regulation E-Delivery	July 16, 2026
☐	Regulation Crypto Assets	August 18, 2026
☐	Rescission of Rule 14a-8 and Amendments to Rule 14a-4	September 16, 2026
☐	Proxy Solicitation Modernization	September 16, 2026
☐	Expansion of Accredited Investor Definition	September 30, 2026

©2026 Vinson & Elkins LLP **velaw.com**

Expected Rulemaking

	Expected Rule Proposal
☐	Rule 144 Safe Harbor(1)
☐	Foreign Private Issuer Eligibility Enhancements
☐	Updating the Exempt Offering Pathways
☐	Rationalization of Disclosure Practices
☐	Executive Compensation Disclosure Reform

(1) This rule is expected to be a re-proposal of rules initially proposed on January 19, 2021, to amend Rule 144 to expand availability of the safe harbor.

©2026 Vinson & Elkins LLP **velaw.com**

SEC Comment Letters

Top Comment Letter Topics

- Management's Discussion and Analysis (MD&A)
- Non-GAAP financial measures
- Key performance measures
- Segment reporting
- Revenue recognition
- Goodwill and intangible assets

Comment Letter Focus Remained Consistent With Previous Years

©2026 Vinson & Elkins LLP **velaw.com**

Vinson&Elkins

Proxy Season Debrief & Shareholder Engagement

Jon Solorzano, V&E
Jessica Strine, Jasper Street
Sebastian Tiller, V&E



SEC Pullback Reshaped the 2026 Proxy Season

▼20%
Shareholder proposals submitted in 2026 vs. 2025 proxy season

▼51%
Notices to exclude shareholder proposals

6
Proponent lawsuits challenging proposal exclusions

▼49%
Exempt solicitation filings after SEC staff objection

▼5.6%
Decline in overall support for shareholder proposals for the 2026 proxy season

What the SEC did

- **Nov 2025: Staff mainly stopped substantive Rule 14a-8 review**
  Except for state-law (i)(1) requests, companies could obtain a no-objection letter by representing they had a reasonable basis to exclude*
- **Dec 2025: Executive order targeted proxy advisors**
  Directs the SEC to review proxy advisor rules, apply anti-fraud rules to proxy advisor recommendations, and weigh proxy adviser registration as investment advisers
- **Aug 2026: Division exited the Rule 14a-8 process entirely**
  Staff no longer responds to no-action requests of any kind or to Rule 14a-8(j) notices
- **Sept 2026: SEC proposed rescinding Rule 14a-8**
  Would leave proposals to state law and governing documents; does not change the rules for the core 2027 season

What it means for the 2027 season

- **Exclusions carry litigation risk**
  Document the basis for every exclusion (in one lawsuit, the court sided with a proponent over the company in post-hoc arguments)
- **Governance proposals still draw the most support**
  Average support of 34%, vs. 16% for environmental and 9% for social proposals
- **Proxy advisor influence is shifting**
  Glass Lewis replaces its single benchmark policy in 2027, while some large institutional investors have eschewed proxy advisors, focusing instead on internal AI platforms

* The Division stated that it would respond only to no-action requests under Rule 14a-8(i)(1), relating to proposals deemed an improper subject for shareholder action under state law. It subsequently noted that it did not receive any such requests during the 2025–2026 proxy season.

©2026 Vinson & Elkins LLP velaw.com

SEC Staff Opens the Door to Retail Voting Programs

Staff no-action letters

Recipient	Date	Description
ExxonMobil	Sept. 15, 2025	First program: opt-in standing instruction to vote with the board on all matters or all but contested elections and deals needing a vote. Override or cancel free; not available to registered investment advisers (RIAs) voting client shares
Goldman Sachs	Sept. 28, 2026	Modeled on Exxon's, with features for current employees and former partners
Tesla	Sept. 29, 2026	Any issuer may rely on it without its own letter if it runs the program as described; covers seven proxy rules (vs. two for Exxon); allows "hubs" run by shareholder-communication providers to enroll holders across issuers; householding (one instruction for all of a holder's accounts); persistent elections (survive a sell and rebuy); enrollment at any time; offering to all retail holders or a subset (no RIA exclusion)
Funds and BDCs	Sept. 29, 2026	Mutual Fund Directors Forum letter: funds and BDCs may run directed voting programs, excluding contested elections and primary advisory contract votes; needs unanimous independent-director approval and reapproval every three years

New Corp Fin interpretations (Oct. 8, 2026): board-aligned programs remain feasible

CFI 189.01: A program whose only option is a standing instruction to vote with the board's recommendations is permitted; the company need not add other options, such as voting against the board, even if shareholders ask.

CFI 189.02: If a program lets holders vote with a third party's recommendations, company communications may be a solicitation subject to Rule 14a-9; consider whether holders get the recommendation free and have time to override the standing instruction.

ExxonMobil's first year with the program

100,000+
holders enrolled by March 2026, covering ~150M shares

~3%
participation, per ExxonMobil's May 2026 materials

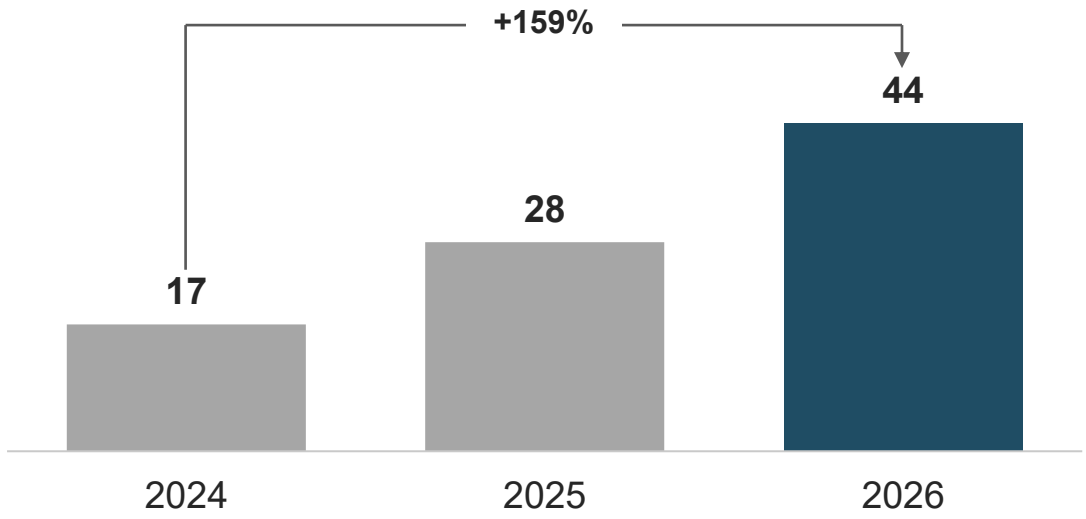
23.5%
support for a 2026 proposal to add non-board voting options

Pending
class action alleging fiduciary duty breaches and proxy-rule violations, now in S.D. Tex.

©2026 Vinson & Elkins LLP velaw.com

Reincorporation Proposals Hit a Four-Year High, Led by Texas

Reincorporation proposals, by proxy season



16 of 44
2026 proposals targeted Texas, up from 2 in 2025

13 of 16
Texas reincorporation proposals passed, despite ISS and Glass Lewis opposing 15 of the proposals

69% vs. 87%
Non-controlled companies had median support of 69%, whereas controlled companies had median support of 87%

Considerations for Reincorporation

Texas thresholds have the Chairman's backing
In Oct. 2025, Chairman Atkins said proposals failing Texas's $1M or 3% ownership test may be excluded under Rule 14a-8(i)(1).

Rescinding Rule 14a-8 would hand proposals to state law and company governing documents
The SEC's Sept. 2026 proposal to rescind Rule 14a-8 would leave determinations about the role of shareholder proponents to applicable state law and company governing documents.

Arbitration provisions will not affect registration statement effectiveness
A Sept. 2025 SEC policy statement stated mandatory arbitration provisions will not affect SEC decisions on whether to accelerate effectiveness of registration statements.

Investors take governance into consideration
Companies and their boards must carefully consider which governance items should be included when reincorporating, taking note of the company's voting base and investor preferences.

©2026 Vinson & Elkins LLP velaw.com

Vinson&Elkins

Ethics & Enforcement

Jeffrey Johnston, V&E
Robert Kimball, V&E
James McGovern, V&E



Shifting Ground: DOJ and SEC Enforcement Policy

Corporate enforcement, cooperation credit, and the SEC’s data-driven insider trading playbook

©2026 Vinson & Elkins LLP **velaw.com**

Galeotti Enforcement Plan (May 12, 2025)

- **Three tenets:** focus, fairness, and efficiency guide all Criminal Division white-collar work
- **Avoid overreach:** overbroad enforcement "burdens U.S. businesses"; prosecutors must not punish risk-taking
- **Individuals first:** "The Department's first priority is to prosecute individual criminals"
- **Not every case is criminal:** civil or administrative remedies often suffice for low-level corporate misconduct
- **Revised CEP:** clearer benefits for self-disclosure and cooperation, including shorter terms
- **Speed and monitors:** faster investigations; narrowly tailored monitorships; review of all existing monitors

New whistleblower areas

- Cartel / TCO-related violations
- Immigration law violations
- Material support of terrorism
- Sanctions offenses
- Trade, tariff, and customs fraud
- Procurement fraud

©2026 Vinson & Elkins LLP **velaw.com**

McDonald Directive 26-12 (October 1, 2026)

- **New division:** National Fraud Enforcement Division takes an “aggressive, all-tools approach” while guarding against overbroad enforcement
- **Corporate Enforcement Section:** must receive all ongoing corporate cases within 7 days; leads post-resolution compliance review
- **Priorities:** health care, procurement/government programs, revenue evasion, tariff/import fraud, and forced labor
- **Data analytics:** National Fraud Detection Center generating leads “at a rapid pace”
- **Whistleblowers:** new incentives planned, including for participants in the conduct

Great-weight charging factors

$25M+
loss, or 25+ victims

3+ yrs
conduct duration

3+
federal districts affected

Mgmt
knowledge or involvement

Also: concealment from regulators or auditors; threats to safety or military readiness; harm to taxpayer programs; funds to foreign adversaries; immigration offenses.

General DOJ Enforcement Policy Changes

Priorities & Charging

- Government-program, health care, procurement, trade fraud; cartel/TCO finance; sanctions
- Investor fraud and market integrity named “high-impact”
- Individuals before entities
- Directive 26-12 thresholds define serious cases

Cooperation (CEP)

- VSD + cooperation + remediation, no aggravators = declination
- “Near miss”: NPA under 3 years, 75% fine reduction, no monitor
- No self-report: up to 50% reduction
- Department-wide since Mar. 10, 2026 (excl. antitrust)

Monitors

- Monitor benefits must outweigh costs
- Pre-resolution compliance upgrades can cut fines and avoid monitors
- Corporate Enforcement Section now evaluates post-resolution compliance

©2026 Vinson & Elkins LLP **velaw.com**

General SEC Enforcement Policy Changes

- **Re-acceleration:** activity rising again in core fraud areas, including insider trading, as pipelines mature
- **Fewer, deeper cases:** multiple actors, long time horizons, records built on patterns and financial tracing
- **Specialized resources:** staff focused almost exclusively on insider trading, backed by advanced analytics and surveillance
- **Cross-border:** SEC Cross-Border Task Force targets foreign actors defrauding U.S. retail investors, in parallel with DOJ
- **Enforcement Manual:** updated in Feb. 2026

“fewer but more fully developed cases”

©2026 Vinson & Elkins LLP **velaw.com**

Insider Trading: The SEC's New Playbook

Detect

Event-driven analysis of trading ahead of market-moving news

Connect

Network mapping of traders, accounts, information flows

Trace

Financial tracing of profit-sharing and kickbacks

Prove

Scienter inferred from the architecture of conduct

Benchmark case: 21 defendants

- Corporate attorney allegedly misappropriated M&A information
- Passed through intermediaries to traders; structured kickbacks
- Multi-year, 12+ transactions, global participants
- Charged "up and down the tipping chain" in one action

Scienter signals and data sources

- Repeat trading across unrelated deals; incentives; professional access to MNPI
- Social media, location and travel data, consumer transactions, metadata
- Together, an "evidentiary mosaic"

©2026 Vinson & Elkins LLP **velaw.com**

THE WALL STREET JOURNAL.

U.S. • LAW

The Insider-Trading Scandal That Is Rocking M&A Law Firms

A job-hopping lawyer accessed files and recruited lawyers at elite firms to tip traders about pending deals, prosecutors say

Aa 202 Gift unlocked article Listen (12 min)



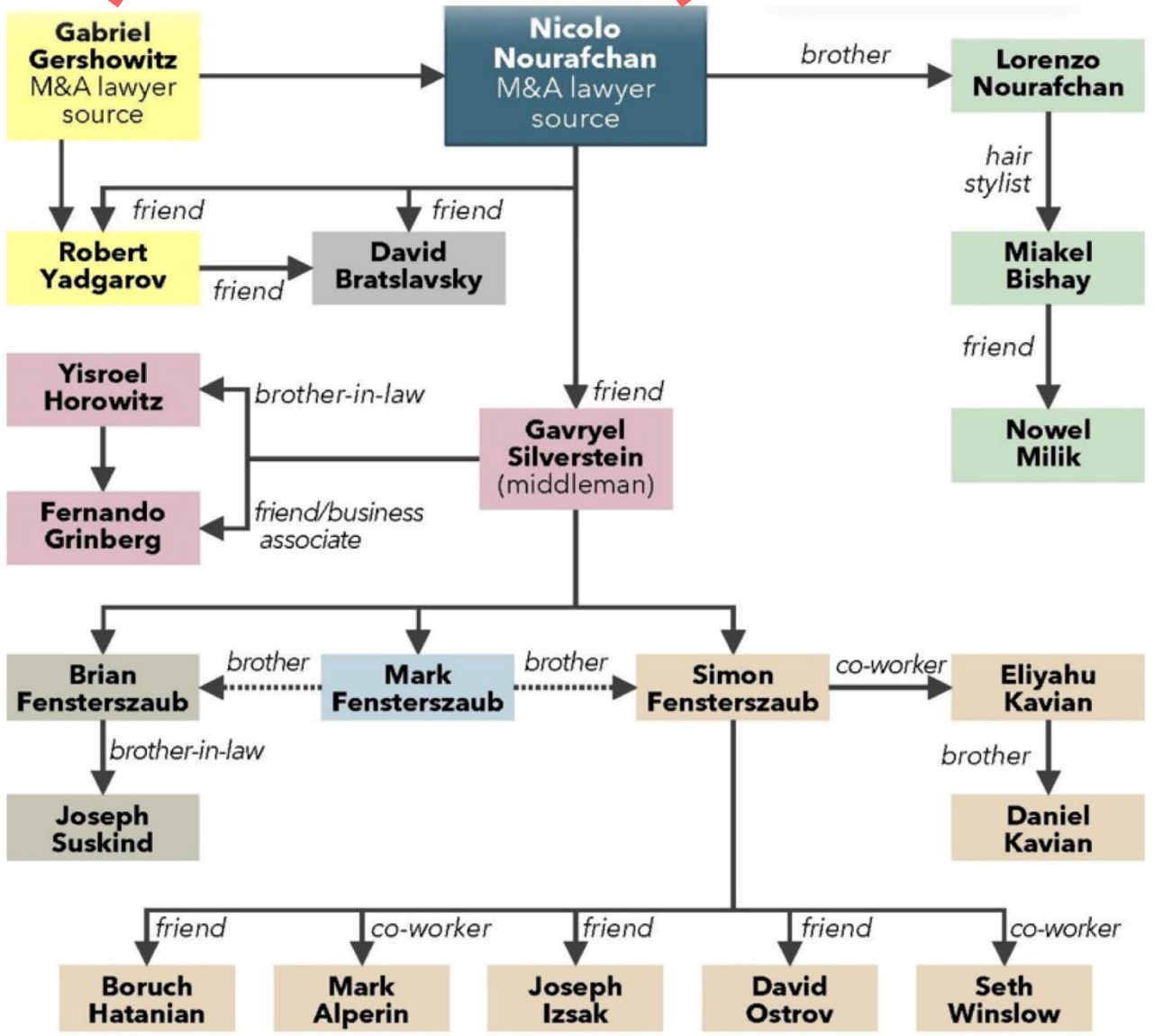
EMIL LENDOF/WSJ; ALAMY

Columbia Law School
Weil Gotshal
DLA Piper
Willkie Farr
Cooperating Witness

Yale Law School
Cleary Gottlieb
Sidley Austin
Latham & Watkins
Goodwin Procter

Co-Conspirator #2:

Wachtell



©2026 Vinson & Elkins LLP velaw.com

USAO Eastern District of New York

Filing Agent Employee Sentenced to 27 Months (July 7, 2026)

Press release

Key Takeaways

- Justin Chen, assistant manager at an EDGAR filing agent, sentenced to 27 months
- Traded in 13 companies using advance client filings; at least $2.38M profit
- Forfeiture $1,828,442; restitution $115,437.19
- Example: bought SigmaTron the evening before a merger at a 134% premium; sold about 30 minutes after; about $290,005
- Co-defendant Zhen pleaded guilty; SEC judgment deemed satisfied by criminal orders, no civil penalty

RELEVANCE TO PRACTICE

Risk extends to vendors and filing agents. Access path was reportedly a shared inbound email account; SEC's Market Abuse Unit uses CAT data to match trades to disclosure timing.

©2026 Vinson & Elkins LLP **velaw.com**

Insider Trading: The DOJ Perspective

Market integrity priority

Investor fraud named a “high-impact area”; coordination with the SEC’s Cross-Border Task Force

Individual self-disclosure

Pilot program offers NPAs to culpable individuals who report first and cooperate (excludes CEOs, CFOs, scheme leaders)

Data-driven leads

Fraud Division analytics generating cases rapidly, mirroring the SEC approach

©2026 Vinson & Elkins LLP **velaw.com**

Implications for Corporate Clients

120 days

to self-report after an internal whistleblower report and preserve declination eligibility

75%

fine reduction plus NPA under 3 years for “near miss” self-reports

- **Self-disclosure:** a qualifying VSD now yields a declination, uniformly across DOJ; “you benefit from being first in the door”
- **Hotline design:** build escalation protocols around the 120-day clock
- **Proactive cooperation:** attribute facts to sources, identify all individuals regardless of seniority, flag unknown evidence, produce overseas documents or prove legal barriers
- **Triage early:** map facts against Directive 26-12 factors (3+ years, 3+ districts, 25+ victims or $25M+ loss, management involvement)
- **Resolution strategy:** press for speed and narrowly scoped (or no) monitorships

©2026 Vinson & Elkins LLP **velaw.com**

Practical Implications

Implications for Insider Trading Exposure

Detection risk	Spreading activity across accounts, intermediaries, or time is an “increasingly outdated” assumption
Defense strategy	Rebutting one trade is not enough; challenge the analytics and explain the pattern
Compliance gaps	Restricted lists, windows, and certifications are “no longer sufficient”; add data governance, AI/model risk, surveillance, cybersecurity
Expanded perimeter	Issuers, law firms and advisers, quant and alternative-data managers, AI platforms, prediction markets
Cooperation pressure	Multi-defendant cases plus DOJ self-disclosure and whistleblower programs raise first-mover risk for individuals

©2026 Vinson & Elkins LLP **velaw.com**

Changes in SEC Leadership and Priorities



©2026 Vinson & Elkins LLP velaw.com

Enforcement Trends and Priorities

FY2025 Enforcement Statistics

- 456 enforcement actions filed, a 22 percent decrease year over year
- Approximately $17.9 billion in monetary relief ordered
- $14.9 billion tied to the 2009 *Stanford* action (final judgment entered 2025)
- Excluding *Stanford*: about $1.4 billion in disgorgement and $1.3 billion in civil penalties, a 33 percent year-over-year reduction
- 1,095 matters closed without enforcement action
- “Not preoccupied with numbers”

Key Priorities

- “Stop to regulation by enforcement” and recentered on its core mission
- Focus on “bread and butter” violations: insider trading, offering frauds, market manipulation, and Ponzi schemes
- Use AI to make investigations quicker and staff will look to take testimony earlier in the investigation
- Rethink primarily penalizing issuers
  - Instead consider penalizing the individuals responsible for the conduct
- End of “neither admit nor deny” settlements

©2026 Vinson & Elkins LLP **velaw.com**

Key Enforcement Settlements

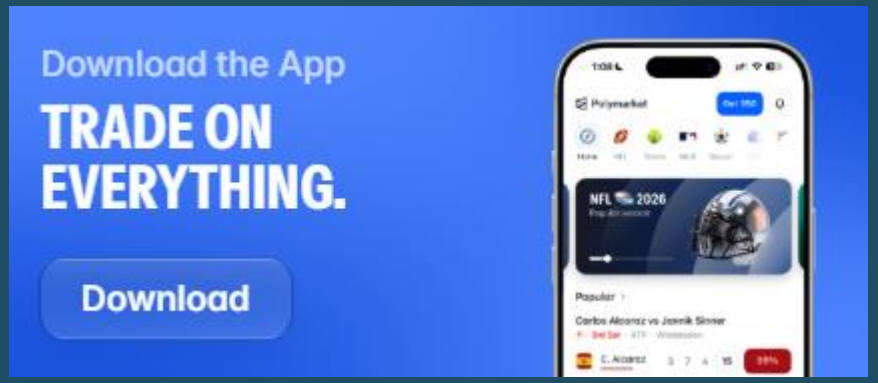
In the Matter of Archer-Daniels-Midland Co., Vince Macciocchi, and Ray Young (settled Jan. 27, 2026)

- Allegation: ADM inflated the reported performance of its "Nutrition" segment, a business touted as a key growth driver
- ADM paid a $40 million civil penalty and agreed to cease and desist from antifraud, reporting, and books-and-records violations
  - Division president agreed to a $529,000 penalty; CFO agreed to a $650,000 penalty

In the Matter of Key Tronic Corp., Brett R. Larsen, and Nicholas S. Fasciana (settled Apr. 20, 2026)

- Allegation: employees at the Oakdale, Minnesota, facility made false inventory entries, resulting in improperly recognized income in 1H FY 2021
- Company agreed to cease and desist from Exchange Act §§ 13(b)(2)(A) and (B); no penalty or disgorgement given cooperation and remediation
- CEO agreed to a $20,000 penalty; SVP-Operations agreed to a $15,000 penalty

©2026 Vinson & Elkins LLP **velaw.com**



OG FIND YOUR EDGE

Prediction Markets

Kalshi
Trade on anything.

Polymarket

©2026 Vinson & Elkins LLP **velaw.com**

Attorney Ethics Considerations

- **Ethics Rules**
  - **Attorney ethics rules in most Anglo-American jurisdictions forbid lawyers from using confidential information to the disadvantage of the client *or for the benefit of the lawyer or a third person* without the client's informed consent.** See, for example, District *of Columbia Bar Association Rules of Professional Conduct* Rule 1.6(a)(3) (prohibition on lawyer's use of a confidence or secret of the lawyer's client for the advantage of the lawyer); *NYSBA NY Rules of Professional Conduct* (2025), Rule 1.6; and *State Bar of Texas Disciplinary Rules of Professional Conduct* Rule 1.05(b)(4) (prohibition on use of privileged information of a client for the advantage of the lawyer).
- **Commentary**
  - "A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, or except as permitted or required by these Rules, the lawyer must not knowingly reveal information gained during and related to the representation, whatever its source." NYSBA Rule 1.6 Comment 2.
  - "The duty of confidentiality also prohibits a lawyer from using confidential information to the advantage of the lawyer or a third person or to the disadvantage of a client or former client unless the client or former client has given informed consent." NYSBA Rule 1.6 Comment 4B.

©2026 Vinson & Elkins LLP velaw.com

Overview of Prediction Markets

- **Event Contracts**
  - Event contracts are yes/no trades on whether something will happen.
  - Each contract settles at $1 if the event happens and $0 if it does not.
- **Almost any event can be the subject of a contract**
  - **The Costco Hot Dog Economic Index.** Will Costco raise the price of its iconic $1.50 hot dog combo?
  - **Celebrity Papal Audiences.** Will pop-culture icons like Taylor Swift secure an official meeting with the Pope?
  - **"Jacob Misiorowski 103+ MPH" Contract.** Will the Brewers' young ace throw a pitch registered at or above 103.0 MPH during Game 5 of the World Series?
  - **Box Office Bombs.** Following high-profile cinematic releases, traders hedge bets on precise weekend box office drops or whether a heavily budgeted film will lose a specific dollar threshold (*e.g.*, crossing $200 million in losses).
  - **Targeted Government Ousters.** Contracts track the exact exit dates of specific political figures, including U.S. presidential cabinet members.
  - **The "Brink of War" Crypto Clocks.** Traders frequently price the percentage probability of military escalations, tracking whether specific border crossings or naval blockades will take place before a designated midnight deadline.

©2026 Vinson & Elkins LLP **velaw.com**

Overview of Prediction Markets

- **Multiple platforms on which bets can be placed (contracts bought)**
  - Many offshore markets, mostly using cryptocurrency.
  - Some (*e.g.*, Polymarket) are required to limit U.S. participation to a CFTC-registered subsidiary (*e.g.*, Polymarket U.S.), which is a designated contract market and derivatives clearing organization that conducts trades in U.S. dollars.
- **Cost for a single contract (sometimes called a "share")**
  - Dynamically priced between $0.01 and $0.99. The price corresponds directly to what the market believes is the percentage chance of the event occurring.
    - *High Probability*: If a market believes an event has an 80% chance of happening, a "YES" contract will cost $0.80. If you are correct, you make a $0.20 profit when it settles at $1.00.
    - *Low Probability*: If an event has a 20% chance of happening, a "YES" contract costs $0.20. If you are correct, you make a $0.80 profit.
    - *The Inverse*: The "NO" contract for that same event will cost the remaining balance ($0.20 or $0.80) so that the paired contracts always equal $1.00.
- **Platform Trading Fees**
  - Both Kalshi and Polymarket use a curved fee model where fees peak when an event is a 50/50 toss-up and shrink to nearly zero at the extremes (near 1¢ or 99¢).

©2026 Vinson & Elkins LLP **velaw.com**

U.S. v. Gannon Ken Van Dyke (SDNY)

- Federal criminal indictment filed April 2026 against a U.S. Army master sergeant in the Special Forces at Fort Bragg, North Carolina. The DOJ alleged:
  - Van Dyke was directly involved in Operation Absolute Resolve, the U.S. military mission that culminated in the capture of Venezuela's president, Nicolás Maduro, and his wife on Jan. 3, 2026.
  - Despite signing nondisclosure agreements about classified information, Van Dyke placed numerous bets totaling around $34,000 through offshore Polymarket predicting that Maduro would be out of power by January 31, 2026.
  - Following Maduro's capture, Van Dyke's contracts were worth more than $400,000.
- Charges include unlawful use of government information for personal gain,* theft of nonpublic government information, **wire fraud, commodities fraud** and making an unlawful monetary transaction.
- Van Dyke pleaded not guilty and moved to dismiss on the grounds that his Polymarket wagers were not illegal "swaps" as defined by federal commodities law and that the charges independently fail on constitutional grounds, including under the void-for-vagueness doctrine. The court denied the motion.
- Trial is scheduled for later this year.

©2026 Vinson & Elkins LLP **velaw.com**

*Also known as the "Eddie Murphy Rule"

- **CFTC Enforcement Director David Miller:**

  This case marks the first time the CFTC has charged insider trading involving event contracts, and the first time the CFTC has used the so-called "Eddie Murphy Rule" to bring charges based on the misuse of government information.

  The rule[1] is named for Murphy's role in the 1983 film *Trading Places* where his character, Billy Ray Valentine, made a fortune with a stolen government crop report.

1. CFTC adopted the Eddie Murphy Rule (Rule 180.1) in 2011 under authority of Section 753 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (itself adopted in 2010).

©2026 Vinson & Elkins LLP velaw.com

U.S. v. Michele Spagnuolo a/k/a “AlphaRaccoon” (SDNY)

- Federal criminal indictment filed May 2026 against a staff information security engineer at Google Zürich. The DOJ alleged:
  - Spagnuolo used confidential internal data to place $2.7 million in Polymarket bets on at least 23 “Yes” or “No” listings about who would be in the top trending Google searches for 2025. After Google publicized the results, Spagnuolo profited more than $1.2 million. Spagnuolo breached his duty of trust and confidentiality to Google, evidenced by the banner on the software tool labeled “Google Confidential” and Spagnuolo’s certifications that he understood various Google confidentiality and ethics policies.
  - Spagnuolo used the account name “AlphaRaccoon” at Polymarket and subsequently attempted to conceal his proceeds and identity by, among other things, reverting his username to an alphanumeric wallet address.
- Charges include **wire fraud, commodities fraud** and **money laundering**.
- In the DOJ press release about the indictment, U.S. Attorney Jay Clayton, the former SEC chairman, said:

  “Corporate insiders cannot use confidential business information to turn a profit in our markets.”
- The CFTC filed a parallel civil complaint alleging fraud under commodities laws.

©2026 Vinson & Elkins LLP **velaw.com**

In Re George Anthony Devolder Santos (CFTC Enforcement)

- George Santos is a former U.S. congressman who represented New York's 3rd congressional district from January to December 2023.
- The CFTC settled in July 2026 with former Congressman George Santos over allegations that Santos placed insider bets on a Kalshi market regarding whether he would attend the 2026 State of the Union address.
- The CFTC charged Santos with manipulation rather than insider trading because Santos allegedly moved the market with misleading posts about his plans, rather than trading on a secret.
- Santos gave up his roughly $17,570 in profit, paid a $17,500 penalty, and accepted a three-year trading ban, without admitting or denying anything.
- Kalshi caught the trades, froze his account, and handed over the evidence.
- The CFTC recognized "Santos's cooperation in the underlying investigation, which assisted in the swift resolution of this matter."

©2026 Vinson & Elkins LLP **velaw.com**

Gabriel Perez (CFTC Enforcement)

- The CFTC settled charges against Gabriel Perez in August 2026 for misappropriating material, nonpublic information obtained through his federal government employment in order to trade event contracts on a prediction market platform for his personal benefit.
- Perez disgorged $107,539.02 of profits, paid a $65,000 penalty, and agreed to a three-year trading ban.
- Perez worked as a teleprompter operator for the White House.
- Between December 2025 and February 2026, Perez traded presidential mention market contracts, which are event contracts based on words or phrases the President may use during his speeches.
- Perez had access to presidential speeches prior to those speeches being delivered, and Perez misappropriated that information—in breach of his duty of trust and confidence—to trade presidential mention market contracts.
- The CFTC thanked KalshiEX for its assistance and recognized Perez's "exemplary cooperation with the CFTC."

©2026 Vinson & Elkins LLP **velaw.com**

Other Investigations

- **KPMG Employee**
  - KPMG employee allegedly used confidential audit information to place winning bets through Polymarket accounts on earnings results for KPMG-audited companies, including Wells Fargo, DoorDash, General Mills, and Home Depot.
  - 42 yes/no bets tied to the quarterly earnings of 18 companies, winning all but one and generating $22,000 in profit.
- **U.S. Servicemember**
  - Suspected of placing Polymarket bets on military operations related to Iran and Venezuela that won the servicemember more than $1 million.
- **Market Referrals**
  - Polymarket said it referred nearly 100 digital-asset wallets to U.S. authorities based on signs of illicit trading and that it is investigating suspicious trades on the Israeli election—the trades were made shortly before polls closed and bet that Netanyahu would win.
  - Kalshi said it was investigating trades that correctly predicted the appointment of Katie Zacharia as White House Press Secretary.

"Betting markets are increasingly becoming part of the fabric of Washington. They are particularly popular among young, male staff. . . ." (WSJ Oct. 9, 2026)

©2026 Vinson & Elkins LLP velaw.com

Why Existing Corporate Policies Don’t Fit

Existing Corporate Policies Are Not Well Suited for Betting Markets

Regulated by the CFTC, not the SEC	CFTC asserts federal regulatory oversight, including CEA anti-fraud provisions prohibiting fraud in connection with swaps (similar to securities law misappropriation theory, which can be based on breach of confidentiality duty); at least 20 states claim prediction markets violate anti-gambling or anti-gaming laws.
Not a security	Event contracts are CFTC-regulated derivatives (swaps), so an equities-based policy built for stocks and options generally does not reach them.
A broader, lower materiality bar	Securities insider trading liability triggers only on information that could move a stock price, while CFTC liability could reach any nonpublic information relevant to a bet, even if immaterial under securities laws (in fact, often immaterial).
Core mechanics don’t map	Preclearance, blackout windows and insider lists for standard insider trading policies are built around the company’s stock and earnings calendar and other significant events—not yes/no bets on less significant occurrences.

©2026 Vinson & Elkins LLP **velaw.com**

Considerations for Companies

- **What are a company's legal obligations?**
  - Unlike securities fraud, for which controlling person liability can arise, U.S. commodities laws do not have a controlling person liability provision for the CFTC's anti-fraud rules.
  - Reputational injury is potentially significant.
- **Education versus policy**
  - Easy to add this topic to training, even if there is not a mandate to do so.
    - Prohibition on trading on nonpublic information applies to prediction markets.
    - Not limited to what is material for U.S. securities laws.
    - You can get in trouble betting on other companies and events external to the company if you use nonpublic information gained during employment.
  - Also easy to adopt a short policy and include it in an employee handbook or as a standalone provision in a securities insider trading policy, perhaps such as this:

    You may not place a bet in a prediction market if the bet in any way relies on confidential information you obtain about the company or others in the course of your employment.
- **Monitoring of compliance—is that important? Is it possible?**

©2026 Vinson & Elkins LLP velaw.com

Communications with Accountants and Auditors About Loss Contingencies

©2026 Vinson & Elkins LLP **velaw.com**

Possible External Disclosures of Loss Contingencies

- **Preparation of the financial statements**
  - Management is responsible for adopting policies and procedures to identify, evaluate, and account for litigation, claims, and assessments in preparing the financial statements in conformance with GAAP (ASC 450-20).
- **SEC reporting requirements**
  - Management is responsible for disclosing involvement in any material pending legal proceedings, other than ordinary routine litigation incidental to the business (Reg. S-K Item 103).
  - Management is responsible for disclosing any known trends or uncertainties that have had or that are reasonably likely to have a material favorable or unfavorable effect on the business, including litigation (Reg. S-K Item 303).
  - Management is responsible for disclosing any known material risks facing the business, including litigation (Reg. S-K Item 105).
- **Transactions**
  - Management is responsible for accurate disclosure to counterparties during due diligence.
  - Management is responsible for the accuracy of representations and warranties in transaction agreements, whether for underwritings or purchases and sales of businesses (*e.g.,* representations about financial statements, undisclosed liabilities, legal proceedings, and compliance with laws).

©2026 Vinson & Elkins LLP **velaw.com**

Communications About Loss Contingencies

- **Management's reports to other members of management and the Board**
  - Assists senior leadership and the Board in understanding and managing key risks to the business.
  - Includes detailed discussion of significant risks, including potential and non-legal risks.
  - Disclosure framed by internal company practice and policies.
- **Management's representation letter to the auditor**
  - Assists auditors, through responses to specific inquiries, with gathering evidence to support a basis for an opinion regarding the financial statements.
  - Disclosure of loss contingencies in financial statements and notes framed by ASC 450.
  - Management is the primary source of information to auditors about loss contingencies.
- **Attorneys' (in-house or outside) responses to audit request letters**
  - Assist auditors with their audit by corroborating some of the information management furnished about litigation, claims and assessments.
  - Disclosure of loss contingencies framed by the ABA/AICPA Treaty. (AICPA Statement on Auditing Standard No. 12, *Inquiry of a Client's Lawyer Regarding Litigation, Claims and Assessments*, and American Bar Association, *Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information*)

©2026 Vinson & Elkins LLP velaw.com

Cheat Sheet for Disclosure of Loss Contingencies

Disclosure Context	Internal Risk Identification	Item 103 of Reg. S-K	Accounting Accruals and Disclosures	Responses to Auditors
Purpose	Aid board in understanding and managing risks to the company	Inform investors about material legal proceedings	Fairly present the financial condition and results of operations	Support external auditor's review/audit of financials
Audience	Board of Directors and senior management	Public investors	Public investors, financial sources	External auditors
Scope of Information	Broad, encompassing all significant risks, not just legal	Material legal proceedings as defined in securities laws	Broader disclosure than under Reg. S-K or in Audit Response Letters	Loss contingencies for threatened or pending claims or client-requested identified unasserted claims
Disclosure Style	Comprehensive; includes potential risks and mitigation plans	Detailed but precise; avoids speculative information	Numerical with explanatory notes to financial statements	Factual and concise; limited by privilege and confidentiality
Legal Standard/Guidelines	Company's risk management and governance policies	SEC's Reg. S-K Item 103; Rules 10b-5 and 12b-20	SEC and FASB (or IASB) financial reporting and audit standards—esp. ASC 450	ABA/AICPA Treaty
Approval Process	Reviewed by board and senior leadership	Coordinated by legal and finance teams; filed with SEC	Management, Audit Committee, and auditors	Reviewed by senior legal personnel or external attorneys
Update Frequency	Regular updates or as risk profile changes	Quarterly or as required by material changes	Quarterly with annual audit adjustments	Typically, annual with updates only if requested by client

©2026 Vinson & Elkins LLP velaw.com

Some Potential Liabilities for Accountant Communications

- **Sarbanes-Oxley Act of 2002 Section 303(a); Rule 13b2-2(b)**
  - Section 303(a) makes it unlawful "for any officer or director of an issuer, or any other person acting under the direction thereof, to take any action to fraudulently influence, coerce, manipulate, or mislead" any accountant auditing the issuer's financial statements "for the purpose of rendering such financial statements materially misleading."
  - Fraudulent intent is required only for attempts to "influence" auditors, but not efforts to "mislead, coerce or manipulate" them.
  - "Purpose" requirement is satisfied if the actor "knew or should have known" that his or her conduct could render the issuer's financial statements materially misleading.
  - This formulation historically has indicated the existence of a negligence standard.
  - An example of conduct that could violate Rule 13b2-2(b) is "providing an auditor with an inaccurate or misleading legal analysis."
- **Sarbanes-Oxley Act of 2002 Section 307; Rule 205**
  - Section 307 directed the SEC to adopt minimum standards of professional conduct for attorneys appearing and practicing before the SEC in the representation of securities issuers. The SEC adopted Part 205, which requires lawyers to report certain kinds of possible misconduct to a Chief Legal Officer or CEO and, if the lawyer does not receive an appropriate response, then to report the misconduct to the issuer's audit committee or board of directors.

©2026 Vinson & Elkins LLP velaw.com

Key Principles for Attorney Communications to Auditors

- **Duty of confidentiality; client consent needed**
  - Attorneys should disclose to their clients (the company) any confidence, secret or evaluation that will be communicated to another—including auditors—and should satisfy themselves that an authorized officer of the company has consented to the disclosure. See Model Rule of Professional Conduct 1.6(a).
- **Protection of attorney/client privilege**
  - Client disclosure to a third party of a part of any privileged communication made to the attorney may waive privilege for the whole communication.
    - If the attorney's knowledge of unasserted possible claims is obtained by confidential communications from the client, disclosure might constitute a waiver as fully as if the communication related to pending claims.
    - Providing an auditor with an evaluation of either pending or unasserted possible claims—to the extent based upon a confidential communication with the client—may be argued to waive any privilege with respect to that claim.
    - An attorney's placing a value on a claim, or estimating the likely result, might be treated as an admission or might be otherwise prejudicial to the client.
  - Federal law does not recognize an accountant work-product privilege. Information disclosed to an auditor may therefore be subject to discovery. But disclosure of attorney work-product to auditors—whether in writing or orally—does not automatically waive attorney work-product protection. See *United States v. Arthur Young & Co.*, 465 U.S. 805 (1984), and *United States v. Deloitte*, 610 F.3d 129 (D.C. Cir. 2010).

©2026 Vinson & Elkins LLP velaw.com

ABA Policy Statement for Audit Response Letters

- Attorneys will furnish information in an audit response letter only with respect to "loss contingencies" as defined in ASC 450-20 that may result in incurrence of a liability or impairment of an asset if the attorney has devoted substantive attention to and consulted with its client about the following loss contingencies:
  - **Overtly threatened or pending litigation**—whether or not specified by the client
    - "A potential claimant has manifested to the client an awareness of and present intention to assert a possible claim or assessment unless the likelihood of litigation (or of settlement when litigation would normally be avoided) is considered remote." ABA Statement of Policy ¶ 5
  - **Contractually assumed obligations** *that the client has specifically identified and which the client has specifically requested comment to the auditor*
  - **Unasserted possible claims or assessments** *that the client has specifically identified and specifically requested comment to the auditor*
    - "[W]here there has been no manifestation by a potential claimant of an awareness of and present intention to assert a possible claim or assessment." ABA Statement of Policy ¶ 5
    - Clients should request an attorney to provide information about specific unasserted claims only if the client has determined that the standard for disclosure under ASC 450-20 has been met. ABA Statement of Policy ¶ 5
- Outside of these three categories, attorneys should not be asked—nor should they undertake—to provide information to the auditor about loss contingencies.

©2026 Vinson & Elkins LLP velaw.com

Key Points for Audit Response Letters

- Confirm the client has authorized the attorney's response to the request (whether initial or update).
- Make sure appropriate personnel have been surveyed and appropriate data reviewed for the response.
- Limit the response to the entities covered by the request.
- Limit the response to items that are considered individually or collectively material to the presentation of the client's financial statements.
- Specify the effective date as of which information is being furnished in the response and indicate there is no duty to update for changes that may subsequently be brought to the attorney's attention.
- Expressly note that the response is limited in accordance with the ABA's Statement of Policy.
- Do not address matters outside the loss contingencies specified in the ABA's Statement of Policy.

In "special circumstances," the auditor may obtain information in a conference with the attorney.

- This raises all the issues of a response letter and a higher risk of the auditor's misunderstanding the risks and response or of receiving privileged information.
- The auditor should document conclusions reached about the need for accounting for or disclosure of litigation contingencies; documents reflecting the conference create risk to the attorney-client privilege.

©2026 Vinson & Elkins LLP velaw.com

Key Points for Audit Response Letters

- Rarely express judgments about the outcome of the matters described in the response letter—except in those relatively few clear cases where it appears that an unfavorable outcome is either "probable" or "remote" based on these narrow definitions in the ABA Statement of Policy:
  - ***Probable:*** An unfavorable outcome for the client is probable if the prospects of the claimant not succeeding are judged to be extremely doubtful and the prospects for success by the client in its defense are judged to be slight.
  - ***Remote***: An unfavorable outcome is remote if the prospects for the client not succeeding in its defense are judged to be extremely doubtful and the prospects of success by the claimant are judged to be slight.
- Estimates of the amount or range of potential loss should generally not be provided in the response unless the probability of inaccuracy of the estimate is slight.
- Do not provide information about unasserted possible claims unless:
  - Specifically requested to do so in the audit request letter (the unasserted claim must be identified specifically) and
  - Only if the client has determined that the standard for disclosure under ASC 450-20 has been met (it has been determined that: (i) it is "probable" that a possible claim will be asserted, (ii) there is a reasonable possibility that the outcome (assuming a claim is asserted) will be unfavorable, and (iii) the resulting liability would be material to the client's financial condition).

©2026 Vinson & Elkins LLP velaw.com

Accounting Accrual and Disclosure

- ***Accrual Standard***—A company must ***accrue*** for a loss contingency if *both*:

  (1) "Information available before the financial statements are issued or are available to be issued . . . indicates that it is *probable* that an asset had been impaired or a liability had been incurred at the date of the financial statements" and

  (2) "the amount of the loss can be reasonably estimated." ASC 450-20-25-2

  If either of these conditions is not met, ***disclosure*** about the loss contingency is required if it is *reasonably possible* that a loss or an additional loss (above the amount accrued) may have been incurred. The disclosure must include an estimate of the loss or additional loss if the loss is estimable.

  No disclosure is required if the possibility of a loss is *remote*.

- ***Amount of Accrual***—If the reasonable estimate of loss is a range, then if some amount within a range of loss appears at the time to be a better estimate than any other amount within the range, that amount shall be accrued. When no amount within the range is a better estimate than any other amount, the minimum amount in the range shall be accrued. ASC 450-20-30-1

- ***Unasserted Claims***—No disclosure is required of a loss contingency involving an unasserted claim or assessment "if there has been no manifestation by a potential claimant of a possible claim or assessment" unless (1) it is considered *probable* that a claim will be asserted and (2) there is a reasonable possibility that the outcome will be unfavorable. ASC 450-20-50-6

©2026 Vinson & Elkins LLP **velaw.com**

Accounting Definitions

- ***Loss Contingency***— "An existing condition, situation, or set of circumstances involving uncertainty as to possible loss to an entity that will ultimately be resolved when one or more future events occur or fail to occur. The term loss is used for convenience to include many charges against income that are commonly referred to as expenses and others that are commonly referred to as losses." ASC 450-20-20
- ***Probable***— "The future event or events are likely to occur." ASC 450-20-20
- ***Reasonably Possible***— "The chance of the future event or events occurring is more than remote but less than likely." ASC 450-20-20
- **Remote—"**The chance of the future event or events occurring is slight." ASC 450-20-20

©2026 Vinson & Elkins LLP **velaw.com**

Litigation Disclosures under Reg. S-K Item 103

(a) Describe material pending legal proceedings, *other than ordinary routine litigation incidental to the business*

(b) No information need be given . . . for proceedings:

(1) That involve negligence or other claims or actions if the business ordinarily results in such claims or actions, unless the claim or action departs from the normal kind of such claims or actions; or

(2) That involve primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis.

(c) Notwithstanding paragraph (b) of this section, disclosure under this section shall include, but shall not be limited to . . . [bankruptcy, litigation with insiders, environmental matters, etc.]

Key Differences from ASC 450-20

- Item 103 is not limited to "loss contingencies"
- "Ordinary routine litigation" is an SEC disclosure exception, not a financial accounting exception or audit response exception
- Item 103(b) and (c) are SEC disclosure exceptions, not financial accounting exceptions or audit response exceptions.
- Accounting materiality drives financial accounting and audit responses.

©2026 Vinson & Elkins LLP velaw.com

Vinson&Elkins

Y’all Street is Open for Business

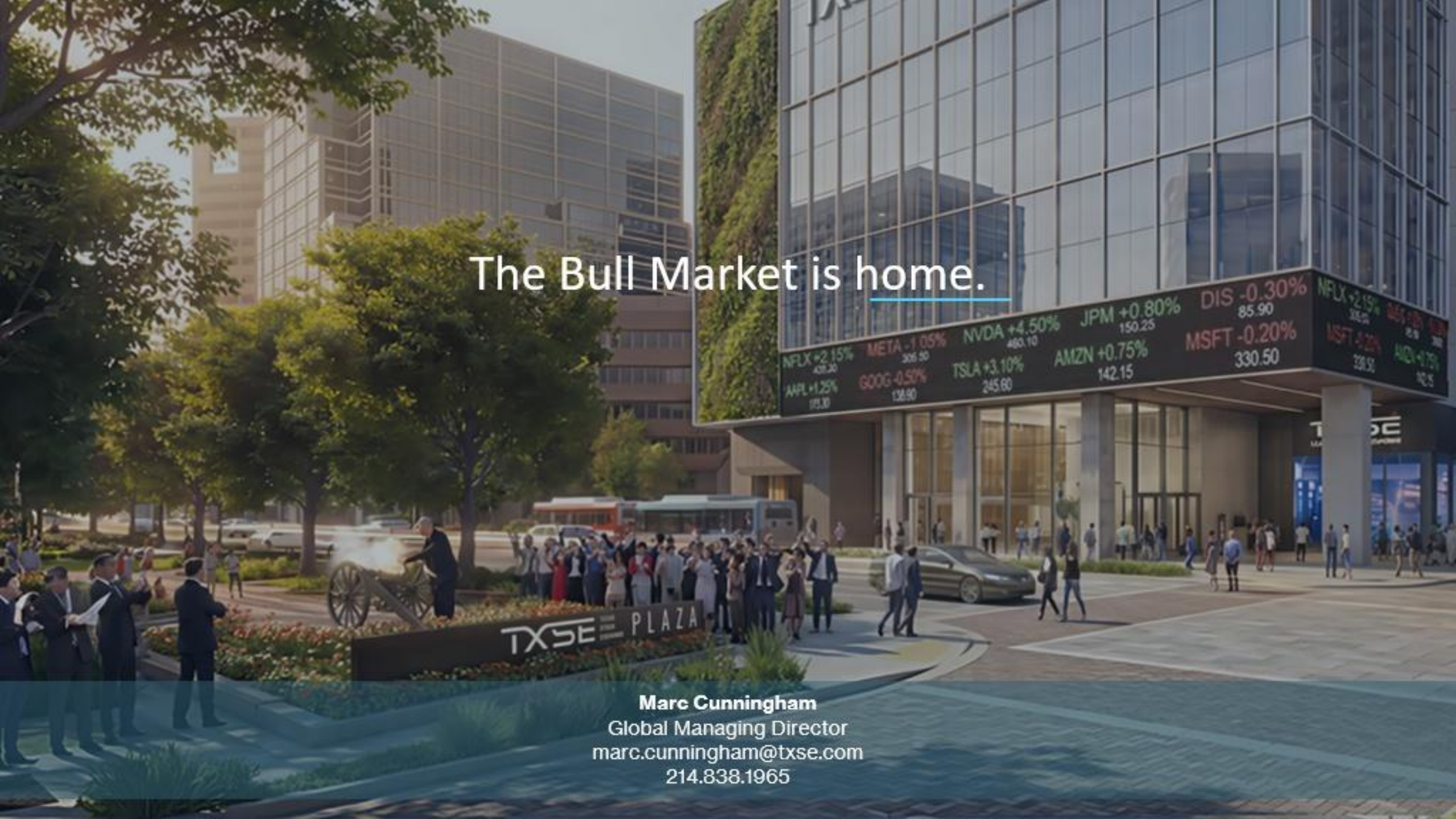
Katherine Frank, V&E
Marc Cunningham, TXSE



TXSE

TEXAS STOCK EXCHANGE





Marc Cunningham
Global Managing Director
marc.cunningham@txse.com
214.838.1965

Vinson&Elkins

SEC Updates

Alex Bahn, V&E
Katherine Frank, V&E
Mike Telle, V&E



Final SEC Rules

Final SEC Rules

FPI Insiders Now File Section 16 Reports

What the rule requires

- Since March 18, 2026, directors and officers of foreign private issuers (FPIs) with Section 12-registered equity must file Forms 3, 4 and 5
- Section 16(b) short-swing liability and 16(c) short-sale limits still do not apply
- 10% holders of FPIs are not required to make Section 16 filings
- Supervisory and management board members both generally count as directors

Who is exempt

- FPIs organized in Australia, Canada, Chile, the EEA*, India, Singapore, South Korea, Switzerland or the UK that are subject to similar home-country reporting requirements are exempt from making Section 16 filings, subject to certain conditions

What to plan for in the 2027 reporting season

Year-end Form 5s

First FPI Form 5s are due mid-February 2027, 45 days after fiscal year-end

Annual meeting equity grants

Awards approved in connection with the meeting must be reported on Form 4s within two business days

Section 16 Controls

Decide whether to update D&O questionnaires or implement other controls to track filings made by Section 16 personnel

FPI status test

Losing status as of the last business day of the second fiscal quarter (*e.g.*, June 30) brings the proxy rules, 10-K and 16(b) liability on the first day of the following fiscal year

* The European Economic Area (EEA) consists of the 27 member states of the European Union (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden) as well as Iceland, Liechtenstein, and Norway.

©2026 Vinson & Elkins LLP **velaw.com**

Final SEC Rules

SEC's Innovation Exemption for Tokenized Stock

What it does

The SEC's September 17, 2026 temporary exemption order provides five-year conditional relief for trading blockchain tokens of exchange-listed stock on Tokenized Securities Venues (TSVs). Before trading tokens created by an unaffiliated third party, a TSV must give the issuer written notice. Tokens must carry the same rights as the underlying shares, and TSV trading must halt whenever the primary listing exchange halts or suspends the underlying security.

Issuers can **opt out** of the trading on TSVs of their tokenized stock, but must do so **within 30 days of receiving a TSV's notice**

If a TSV wants to provide for trading of a tokenized version of your company's stock

Day 0: Notice received

Sent by mail or email to the principal executive office/email address on the cover of the company's Exchange Act reports

Days 1–30: Decide

Deliver a written objection by day 30. There is no blanket objection; each TSV notice needs its own timely objection

Objection: venue cannot trade the token and posts the objection within 5 days

No objection: trading may begin after day 30

Prepare now

Check the address

Confirm accuracy and monitoring of address(es) listed on Exchange Act report covers

Establish a process

Flag incoming notices, route them to the right people and calendar the 30-day deadline

Weigh the trade-offs

Potential benefits to investors of 24/7 trading and faster settlement come with a risk of price gaps, unreconciled shareholder records, litigation and reputational exposure

Discuss with stakeholders

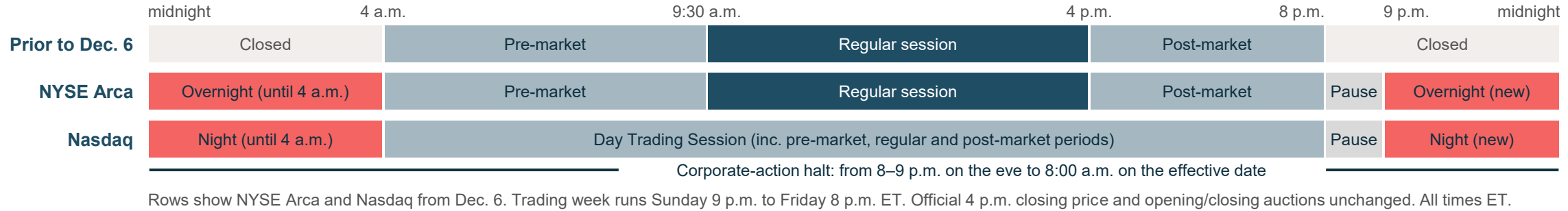
Discuss with IR, transfer agent, management and the board how tokenized trading could affect the company, including records and corporate actions

©2026 Vinson & Elkins LLP **velaw.com**

Exchanges Launching 23/5 Trading

What's changing

Nasdaq, NYSE Arca and several other U.S. exchanges are expected to add a 9:00 p.m. to 4:00 a.m. ET overnight session on December 6, 2026, extending trading to 23 hours a day, five days a week. Every listed stock is eligible and **issuers cannot opt out**. The 4:00 p.m. ET close still sets official closing prices. Nasdaq will merge its pre-market, regular and post-market hours into one Day Trading Session, while NYSE Arca keeps four distinct sessions.



Rows show NYSE Arca and Nasdaq from Dec. 6. Trading week runs Sunday 9 p.m. to Friday 8 p.m. ET. Official 4 p.m. closing price and opening/closing auctions unchanged. All times ET.

Checklist for Issuers and Deal Teams

Corporate action timelines

Build in the mandatory overnight halt for splits, large dividends, ticker or CUSIP changes, spin-offs, de-SPACs and mergers

Equity plans and awards

Review for terms that may now be more ambiguous, such as "the close," "market hours" and "trading day" and consider amending

Insider trading and other policies

Consider whether policies and procedures require amendments (e.g., now ambiguous terms); Nasdaq issuers are more likely to require edits

Disclosure and escalation

Time evening releases carefully (Reg FD requirements and EDGAR hours unchanged) and develop plans for overnight escalation

Offering execution

Plan for weekend wall-crossing, 8:00 p.m. pricing and potential leak risk

Transaction documents

Revisit terms such as "trading day," "market close" and VWAP in warrants and deal agreements

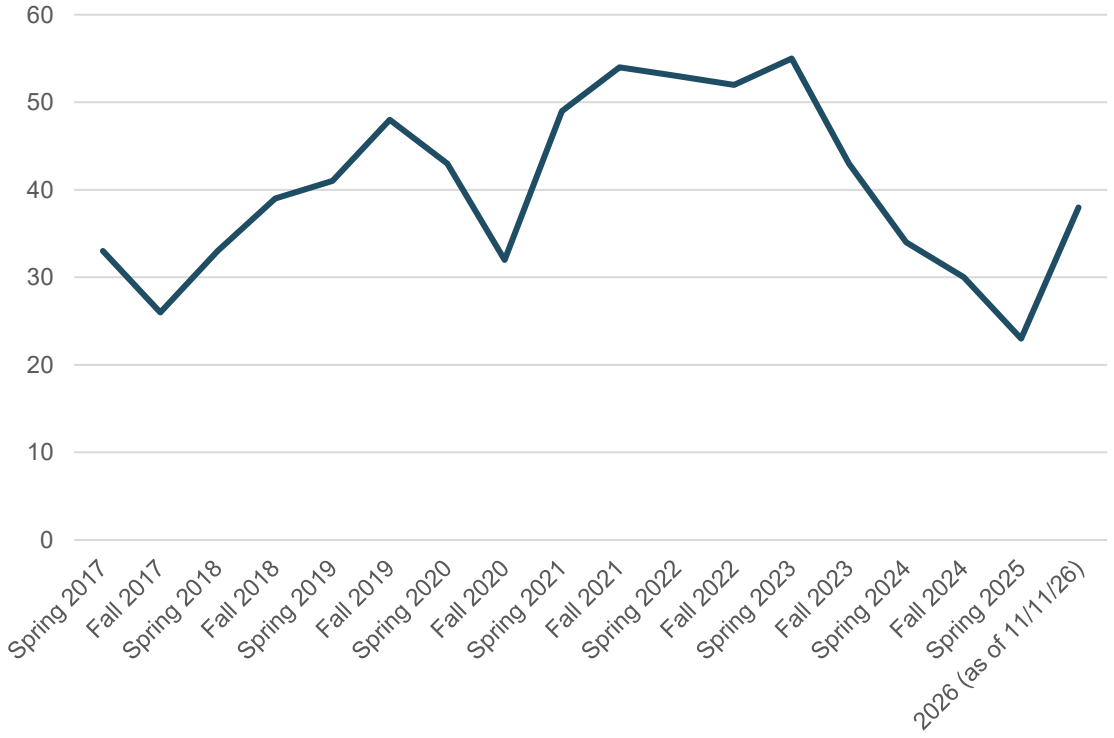
©2026 Vinson & Elkins LLP velaw.com

Proposed Rules & Expected Rulemaking

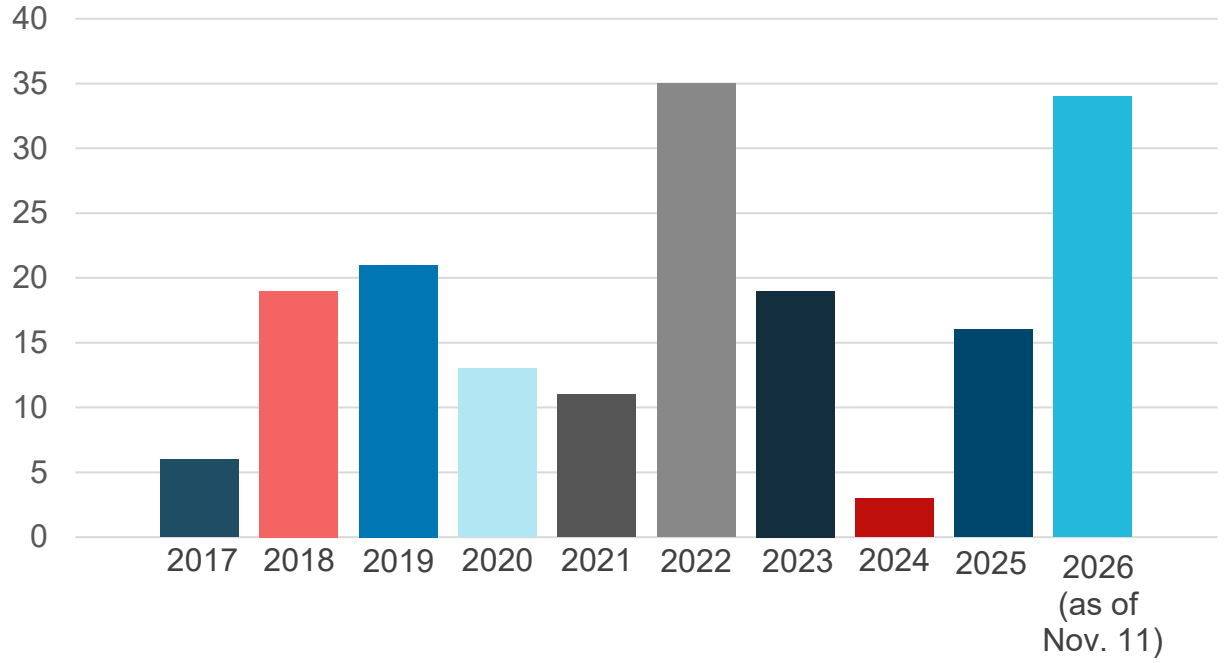
©2026 Vinson & Elkins LLP **velaw.com**

2026 SEC Rulemaking

Number of Rulemaking Activities on the SEC's Regulatory Agenda (2017 - 2026)



Number of New SEC Rules Proposed (2017 – November 11, 2026)



©2026 Vinson & Elkins LLP **velaw.com**

Return of The Warren Commission?

- Warren is widely expected to chair the Senate Banking Committee, which has legislative and oversight jurisdiction over the SEC, starting in January 2027.
- **Whitehouse–Warren letter to Chair Atkins (Aug. 3, 2026)**
  - The senators urged the SEC to withdraw its proposal to rescind the 2024 climate-related disclosure rules, rejecting the SEC's legal basis, including its reliance on the major questions doctrine.
  - The letter argued that rescission would return investors to the inconsistent voluntary disclosures that prompted the rules as climate risks grow, while large companies would still be required to report under California and foreign regimes.
- **Warren–Van Hollen letter to Chair Atkins (Oct. 30, 2026)**
  - The senators urged the SEC to reconsider its "Make IPOs Great Again" proposals, arguing that underregulated private markets explain the decline in IPOs.
  - The letter opposed expanding Form S-3 and WKSI eligibility and extending scaled disclosure, arguing that untested issuers could raise capital without SEC review and investors would lose pay and internal control protections, raising fraud risk.
  - The senators also opposed the climate rule rescission and semiannual reporting, which they argued would reduce information and analyst coverage for investors.

©2026 Vinson & Elkins LLP velaw.com

Optional Semiannual Reporting Proposal

The Proposed Rule

- The SEC issued a proposal for allowing U.S. public companies to move from mandatory quarterly 10-Q reporting to a semiannual regime.
- The proposal would allow companies to elect semiannual reporting or continue on as quarterly reporters.
- No final rule yet; quarterly reporting remains in effect.

Political & Market Momentum and Investor Reaction

- After President Trump renewed his call for semiannual reporting and Chairman Atkins pledged to fast-track it, the SEC proposed the rule on May 5, 2026.
- The proposal drew a record 200,000+ comments, with about 99% of individual letters, Vanguard, SIFMA and the CFA Institute opposed and some large pharma and oil & gas companies in support.

Key Implications for the Company

Disclosure Frequency & Market Expectations

Markets will likely still expect quarterly communication even without mandatory 10-Q filings. Market practice and investor demands may keep the status quo in place for some issuers. In the EU, companies are roughly evenly split between voluntary quarterly and semiannual reporting. UK early adopters saw a decline in analyst coverage.

Investor Relations & Capital Markets

Semiannual filers may still face investor expectations for quarterly earnings releases, which would still require an Item 2.02 8-K. Less frequent reporting could affect analyst coverage and cost of capital.

Internal Controls & SOX Compliance

Quarterly cadence currently drives internal controls, disclosure committee reviews, and SOX. Semiannual reporting could require controls to be recalibrated, and quarterly auditor reviews may still be needed for comfort letters.

Debt Covenants & Financing

Many credit agreements require quarterly reporting and lender consent may be required. Staleness dates, comfort letters, and shelf takedown readiness may require recalibration.

Insider Trading & Compliance

Trading windows are often tied to quarterly earnings releases and filings. Six-month reporting could create longer blackout periods and complicate Rule 10b5-1 plans. Companies may need to consider additional Form 8-K filings for interim developments.

©2026 Vinson & Elkins LLP velaw.com

Simplification of Public Company Filer Status Framework Proposal

- The SEC's proposal would raise the threshold for Large Accelerated Filers and classify all remaining companies as Non-Accelerated Filers, eliminating the current categories of Accelerated Filers and Smaller Reporting Companies and extending scaled disclosure accommodations to the vast majority of public companies.
- A new category of Small Non-Accelerated Filers would cover the smallest public companies and provide for extended filing deadlines.

Status	Current Threshold(s)	New Threshold(s)
Large Accelerated Filer (LAF)	Public float ≥ $700M	Public float ≥ $2B ≥ 60 months of seasoning
Accelerated Filer (AF)	Public float $75M to < $700M	N/A
Non-Accelerated Filer (NAF)	Public float < $75M	Public float < $2B or < 60 months of seasoning
Smaller Reporting Company (SRC)	Public float < $250M or Public float < $700M and Revenues < $100M Can overlap with AF or NAF	N/A
Small Non-Accelerated Filers (SNFs)	N/A	Assets ≤ $35M
Emerging Growth Company (EGC)[1]	< 5 years post-IPO Revenues < $1.235B Not an LAF Can overlap with AF, NAF, SNF or SRC	

1. The proposed reforms would not eliminate EGC status. However, the expansion of current EGC accommodations to all NAFs would largely render the EGC status irrelevant.

V&E ©2026 Vinson & Elkins LLP velaw.com

Simplification of Public Company Filer Status Framework Proposal

Changes for Large Accelerated Filers

$2 billion

Public float threshold (vs. $700 million currently)

60 months

Seasoning period of consecutive calendar months (up from 12 months currently)

Two-year lookback

Must maintain public float of $2 billion or more for two consecutive fiscal years to become classified as a LAF and would continue to be classified as a LAF until public float falls below $2 billion for two consecutive fiscal years.

Public float calculation

Calculated using the average closing price of voting and non-voting common equity over the last 10 trading days of the registrant's second fiscal quarter (vs. the last day of the second fiscal quarter under current rules).

Changes for Non-Accelerated Filers

- Extends the exemption from obtaining an external auditor's attestation on internal controls over financial reporting currently available to EGCs to all NAFs.
- Scales disclosure obligations to align with current SRC and EGC scaled disclosure obligations
  - Two years of audited financial statements (vs. three years currently)
  - Two-year lookback for MD&A (vs. three years currently)
  - Compensation disclosure for three NEOs (vs. five currently)
  - Disclosure no longer required for (1) CEO pay ratio; (2) pay-versus-performance; (3) CD&A; (4) compensation policies and practices related to risk management; (5) risk factors in Exchange Act filings; (6) market risk disclosure; (7) certain related party transaction disclosures; (8) stock performance graph; and (9) grants of plan-based awards table, option exercises and stock vested table, pension benefits table and non-qualified deferred compensation table.
  - No longer required to hold votes for say-on-pay, say-on-pay-frequency and golden parachute advisory votes.

©2026 Vinson & Elkins LLP velaw.com

Registered Offering Reform Proposal

- **Proposed Changes to Form S-3 Eligibility**
  - Elimination of the One-Year Seasoning Requirement.
    - A newly public company could register its first follow-on offering on Form S-3 immediately after its initial public offering.
  - Elimination of the $75 Million Public Float Requirement.
  - Elimination of All Other Transaction Requirements (*e.g.*, failure to pay dividends or defaults on debt payments).
  - Elimination of the Electronic Filings and Interactive Data Files Requirements.
  - Filings Must Be Current and Timely.
    - Issuers must timely file all required reports during the preceding 12 calendar months plus the portion of the month immediately preceding the filing of the registration statement.
    - An issuer would remain eligible for Form S-3 notwithstanding an untimely filing during the relevant lookback period so long as (1) the filing was made within seven calendar days of the original due date (or in the case of Rule 12b-25, seven days from the filing's original due date) and (2) the issuer made only one untimely filing during the lookback period.
  - Prohibition on Certain Ineligible Issuers.
    - BSP issuers, defined as issuers that are, or in the past three years were, a blank check company, a shell company other than a business combination related shell company, or a penny stock issuer, are prohibited from using Form S-3.
    - A former SPAC that successfully completed a de-SPAC would be eligible to register on Form S-3 to the same extent as a newly public company that conducted a traditional initial public offering.
    - Issuers are also prohibited from using Form S-3 if, within the last three years: (1) the issuer or one of its subsidiaries was convicted of a felony or misdemeanor, (2) the issuer or one of its subsidiaries was subject to certain judicial or administrative decrees or orders arising out of governmental actions involving anti-fraud violations in connection with securities filings, or (3) the issuer filed a registration statement that is the subject of any pending proceeding or examination or the subject of any refusal or stop order under Section 8 of the Securities Act. For the purpose of using Form S-3 under the proposal, eligibility would not be affected by bankruptcy status, nor would it be precluded for limited partnerships offering and selling securities other than through a firm commitment underwritten offering.

©2026 Vinson & Elkins LLP velaw.com

Registered Offering Reform Proposal

- **Expansion of WKSI benefits**
  - The proposal would replace the WKSI criteria for domestic issuers with two new categories: “Eligible Listed Issuers” (“ELIs”) and “Seasoned Eligible Listed Issuers” (“SELIs”).
    - ELIs must be Form S-3 eligible and be listed on a national securities exchange.
    - SELIs include any ELI subject to Exchange Act reporting for at least 12 months.
  - ELIs would be eligible for:
    - (1) increased flexibility in pre- and post-filing communications;
    - (2) registration of additional securities, or classes of securities, through the filing of a post-effective amendment;
    - (3) omission of certain information, including whether an offering is a primary or secondary offering, the plan of distribution for the securities, a description of the securities registered other than the name or class of securities and the identification of other issuers;
    - (4) paying filing fees at the time of offering securities off the shelf registration statement, instead of at the time of filing the Form S-3; and
    - (5) all other benefits available to Form S-3 eligible issuers.
  - SELIs would be eligible for automatic shelf registration statements, as well as all benefits available for ELIs.
- **Changes to Form S-1**
  - Elimination of the Annual Report Requirement for Backward Incorporation.
    - Issuers would be allowed to use backward incorporation immediately after becoming subject to Exchange Act reporting requirements.
  - Extension of Forward Incorporation to All Issuers.
    - Form S-1 issuers would be allowed to automatically incorporate into a Form S-1 Exchange Act report filed after the registration statement’s effective date by reference into the prospectus.

©2026 Vinson & Elkins LLP velaw.com

SEC Proposes Rescission of Rule 14a-8 and Steps Out of the Rule 14a-8 Process Entirely

Proposed Rescission of Rule 14a-8

Rule 14a-8 would be rescinded entirely

Proposed September 16, 2026; comments due November 20, 2026

- The SEC would remove any federal right to include shareholder proposals in company proxy materials
- If adopted, the rescission would leave determinations about the role of shareholder proposals to State law and company governing documents
- For many companies under existing law and governing documents, shareholders could generally still bring floor proposals but companies would not be required to include them in proxy materials; Rule 14a-19 director nominations would still appear on the universal proxy card

Current SEC Position

- 2025–26 season: Staff responded only to Rule 14a-8(i)(1) (improper under state law) requests, and received none; for other bases, a company could represent it had a reasonable basis to exclude and receive a no-objection response
- Effective August 14, 2026, the Division will no longer respond to no-action requests of any kind, including under Rule 14a-8(i)(1)
- The Division also no longer responds to Rule 14a-8(j) notices with a letter stating it will not object to exclusion
- Rule 14a-8 itself is currently unchanged: its exclusion bases remain available, and a company must still send a Rule 14a-8(j) notice to the SEC and the proponent at least 80 calendar days before filing its definitive proxy
- Exclusion decisions rest with the company and, if challenged, the courts
- An Administrative Procedure Act suit challenging the SEC's suspension of no-action review remains pending

With no SEC arbiter, proponents have turned to the courts: at least six lawsuits challenging exclusions were filed in 2026, and several companies settled or included the challenged proposals in their proxy statements.

©2026 Vinson & Elkins LLP velaw.com

Modernization of Proxy Rules Proposal

Rule 14a-4(c): Discretionary Voting on Proposals Outside the Proxy

CURRENT

A company cannot vote discretionary proxies on a timely proposal raised outside its proxy materials if the proponent files its own proxy and solicits the votes needed to pass it, which provides proponents with a means to compel inclusion

PROPOSED

A company could exercise discretionary voting authority on proxies on such proposals if it (1) describes the matter and its intended vote in the proxy statement, (2) cross-references to such disclosure on the proxy card, and (3) adds a check box on the card allowing shareholder opt out

Proxy Solicitation Modernization

	Current	Proposed
Annual report delivery (Rule 14a-3)	Annual report must accompany or precede the proxy statement	**Not required for companies with a Form 10-K on file; integrated report option and stock performance graph eliminated**
Incorporation by reference	Proxy and information statements (and Forms S-4/F-4) that incorporate by reference must be sent at least 20 business days before the meeting	**Eliminate requirement**
Broker search (Rules 14a-13 and 14c-7)	At least 20 business days before the record date*	**At least five business days before the record date**
Exempt solicitation notices (Rule 14a-6(g))	Must be submitted by holders of more than $5M of securities; voluntary filings no longer permitted**	**Eliminated for mandatory and voluntary filings, though Rule 14a-9 still applies**

* The proposal follows guidance issued by the SEC earlier this year (CFI 133.02), allowing for shorter, reasonable periods to conduct a broker search.

** The proposal follows guidance issued by the SEC earlier this year (CFI 126.06) halting voluntary exempt solicitation filings by holders of $5 million or less.

©2026 Vinson & Elkins LLP velaw.com

Regulation E-Delivery Proposal

Delivery of Required Documents: Current vs. Proposed

CURRENT

Paper is the effective default; affirmative consent is generally needed for e-delivery.

PROPOSED

Issuers could use e-delivery by default for required documents (*e.g.*, proxy materials, prospectuses, annual reports and tender offer materials), without prior consent, if the recipient has provided an electronic address, receives prominent notice of e-delivery, and has not opted out. **Optional, not required.**

Two Permissible E-Delivery Methods

Direct delivery: In an email or attachment; only if it contains no personal financial information (PFI), *e.g.*, account numbers.

Statement of availability: An email with a link to the website; permitted for any covered information and required where it contains PFI.

What Would Change for Issuers

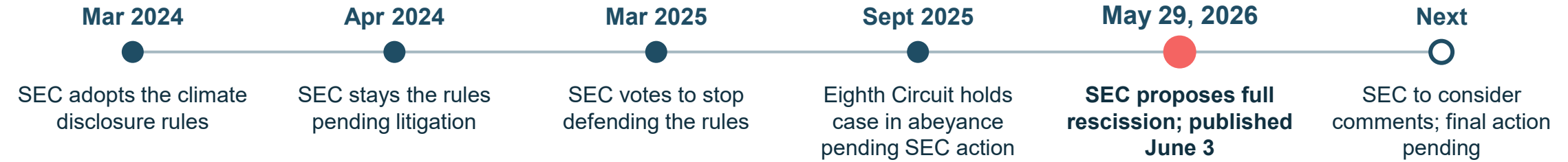
Proxy materials	Eliminate requirement for paper Notice of Internet Availability and its 40-day deadline; timing set by state law and governing documents; extend e-delivery option for business combination proxy solicitations.
Prospectuses and offerings	Rule 172 access-equals-delivery method remains available; e-delivery would add an option, including for Form S-8 plan offerings.

Moving current paper recipients: issuers wishing to move current paper recipients would send two paper notices (at least 180 and 30 days beforehand; the second is unnecessary if the recipient confirms an address). Entities that already obtained affirmative consent to deliver all covered information electronically under the SEC's current e-delivery framework generally would not need to provide this transition disclosure. Recipients must be allowed to opt out, receive a free paper-copy upon request, and update their email address for free.

©2026 Vinson & Elkins LLP velaw.com

Rescission of Climate-Related Disclosure Rules Proposal

Climate-Related Disclosure Rules Timeline



What the SEC Proposed

Rescind in full

Rescind the 2024 climate-related disclosure rules in their entirety, with no replacement climate-specific requirements. Comments closed August 3, 2026.

SEC's stated reasons

The rules exceed the SEC's statutory authority and are unnecessary because existing disclosure requirements already elicit material climate-related information.

What remains

Existing materiality-based disclosure requirements, including the SEC's 2010 climate guidance. The 2024 rules remain stayed until a final rule is adopted.

Other climate-related disclosure requirements may still apply: state laws (*e.g.*, California), international regulations, and investor, contractual and voluntary reporting expectations remain unaffected by the SEC proposal.

©2026 Vinson & Elkins LLP **velaw.com**

Expected Rulemaking

	Expected Rule
☐	Rule 144 Safe Harbor(1)
☐	Foreign Private Issuer Eligibility Enhancements
☐	Updating the Exempt Offering Pathways
☐	Rationalization of Disclosure Practices
☐	Executive Compensation Disclosure Reform

(1) This rule is a re-proposal of rules initially proposed on January 19, 2021, to amend Rule 144 to expand availability of the safe harbor.

©2026 Vinson & Elkins LLP velaw.com

Vinson&Elkins

Governance: CEO Transitions

Alex Bahn, V&E
Becky Baker, V&E



Governance: CEO Transitions

CEO Turnover Hit a 15-Year High in 2025

168
New S&P 1500 CEOs named in 2025, the most since 2010

37%
Of departing CEOs left within their first five years

8.5 yrs
Average tenure of departing CEOs, down from 9.2 in 2024

60%
Of new CEOs were promoted from inside the company

84%
Of new CEOs were in their first enterprise CEO role

Who left, and where

- **Smaller companies saw the biggest jump**
  70 small-cap companies named new CEOs, the most in a decade. The S&P 500 named 59 (up 11%), while mid-caps fell from 47 to 39
- **Tech turnover nearly doubled**
  Tech, media and telecom transitions rose from 18 to 33, the most in more than a decade. Industrials had the most overall, at 50
- **CEOs are leaving sooner**
  Average tenure at exit was the lowest since 2019, and 45% of departing S&P 500 CEOs left by the five-year mark
- **Investors and boards showed less patience**
  Particularly with CEOs overseeing weak growth or slow to transform for an AI-centric future

Who boards picked

- **Insiders, especially at large caps**
  73% of new S&P 500 CEOs were insiders, compared with 50% at small-cap companies
- **First-timers over proven CEOs**
  Of 140 first-time CEOs, 116 had no enterprise CEO experience. COOs and presidents made up 48% of appointments
- **Some boards were not ready**
  19 new CEOs came from the company's own board, the most since 2020
- **Fewer executive chairs**
  25% of boards paired the new CEO with an executive chair, down from 42% two years earlier. Only 8% of new CEOs also became chair

©2026 Vinson & Elkins LLP **velaw.com**

The 8-K Clock Starts With a Decision, Not a Discussion

Where is the board in the process?

1 Discussions	2 Negotiation	3 Decision communicated	4 Successor and agreements
No 8-K	**Judgment call**	**Item 5.02(b): 4 business days**	**Items 5.02(c), (d) and (e)**
Succession planning talks, or a CEO "thinking about" retirement, do not trigger Item 5.02(b)	Talks over exit terms can become notice once a decision is communicated. Record where things stand	Notice of a decision to resign or retire, or of termination, triggers the filing even if oral, conditional or effective later	A new CEO's appointment can wait for the press release, but the departure 8-K cannot. Agreements are reported once signed

Gray areas to work through before the filing

- **Resignation or termination?**
  A board request to step down is a termination. Removing a CEO's duties counts even if the title stays
- **Interim leadership**
  Naming an interim CEO, even temporarily, requires its own Item 5.02(c) report
- **Leaks and MNPI**
  A pending departure can be material nonpublic information: keep the group small, close trading windows and prepare a holding statement
- **Conditional or future-dated notice**
  Notice triggers the filing even if contingent on naming a successor. The 8-K must give the effective date
- **CEO also a director**
  Report the board resignation too. Leaving the board over a disagreement brings Item 5.02(a) description and letter requirements
- **Terms not final**
  Do not hold the departure 8-K for the separation agreement. Report the agreement under Item 5.02(e) when signed

©2026 Vinson & Elkins LLP velaw.com

How the Exit Is Labeled Drives Pay, Disclosure and Litigation Risk

Label	What it usually signals	Pay consequences	Disclosure and litigation pressure
Retirement	Planned, orderly succession, often paired with an advisory or executive chair role	Retirement-eligible awards may keep vesting. Boards sometimes deem a departure a retirement to preserve awards	Abrupt timing or no named successor invites skepticism. Deemed treatment or new arrangements are Item 5.02(e) events
Resignation	Voluntary on paper, but often the negotiated result of board pressure	Severance and unvested equity usually forfeited unless a "good reason" right applies (see below)	"No disagreement" and "unrelated to performance" statements must be accurate
Termination without cause	Board ends the role without alleging misconduct, avoiding a contested fight	Full severance and continued or accelerated vesting under the plan or agreement	Where misconduct was involved, the SEC expects disclosure that the board used discretion to choose "without cause"
Resignation for Good Reason	Disagreement between the company and the executive (often the result of the company's initial effort to proceed with termination for cause)	Full severance and continued or accelerated vesting under the plan or agreement	Need to balance accurate filing language and potential litigation and public perception
Termination for cause	Board finds misconduct that meets the contract standard, often a high bar (dishonesty, fraud, moral turpitude)	Severance and unvested equity forfeited, and clawback of prior pay may follow	Needs a solid investigation record. Expect a fight over whether the standard was met

Before the board picks a label

Investigate first
Finish the facts before agreeing to a label. A rushed "without cause" call is hard to reverse

Keep a look-back right
Let the company recharacterize the exit as "for cause" and recover pay if misconduct surfaces later

Disclose the discretion
Explain in the 8-K and proxy any judgment that lets the executive keep pay otherwise forfeited

Tell one story
Align the press release, 8-K, employee message and later CD&A on the reason for the departure

©2026 Vinson & Elkins LLP velaw.com

McDonald's Shows the Cost of Choosing "Without Cause" Too Early

McDonald's: from "without cause" to a $105M recovery

- **Nov 2019: CEO terminated "without cause"**
  Board fired Steve Easterbrook over a consensual relationship with an employee that violated policy. It chose "without cause" given the high bar for cause, leaving him more than $40M in severance and equity
- **Aug 2020: Company sues to recover pay**
  After learning he had concealed other relationships during the investigation, McDonald's invoked a separation agreement term covering later-discovered cause
- **Dec 2021: $105M+ returned**
  Settlement required him to return cash severance and equity worth more than $105M
- **Jan 2023: SEC settles with company and CEO**
  Company disclosure was deficient for omitting the board's discretion in choosing "without cause". Easterbrook paid a $400,000 penalty and accepted a five-year officer and director bar
- **2023 onward: Shareholder suits**
  Derivative claims challenged the board's original call. In related litigation, Delaware held that officers also owe a duty of oversight

Similar exits since then took a stricter line

- **Barclays faces investor claims despite withholding pay**
  Investors are pursuing Barclays over a 2019 letter that told the UK's Financial Conduct Authority, on Jes Staley's own account, that he was not close to Jeffrey Epstein. A US class action alleging the bank and Staley misled ADR holders survived dismissal in 2025, and UK investors are threatening a High Court claim. The litigation comes despite Barclays suspending, then forfeiting, £17.8M of Staley's deferred bonus and LTIP awards when he left in 2021
- **Cboe, BP, Kroger, Kohl's and Nestlé CEO departures**
  Each CEO left after a board investigation into undisclosed relationships or other conduct breaches. In connection with their departure, the CEOs left unvested equity on the table and forfeited severance, with BP and Kohl's also recovering pay already awarded

The common thread

Each board cited a policy breach, completed an investigation before announcing, and withheld or recovered pay rather than paying the CEO to leave quietly

©2026 Vinson & Elkins LLP velaw.com



V&E Client Alerts

V&E Client Alerts

Securities and Capital Markets

- SEC Moves to Rescind Rule 14a-8, Amend Rule 14a-4, and Modernize Various Proxy Solicitation Rules
- What the SEC's Enforcement Reset Means for the Boardroom
- The SEC Steps Out of Rule 14a-8
- Beyond the Trading Window: Why Prediction Markets Are the Next Frontier of Insider Trading Risks
- A CPA Walks into Enforcement: The SEC Announces a New Reporting Unit
- Key SEC Updates to Five Day Debt Tender and Exchange Offers
- Two Good to Be True? The SEC Proposes Optional Semiannual Reporting
- A Capital Idea: The SEC Proposes Amendments to Expand Access to Registered Offerings
- SEC Moves to Rescind Climate-Related Disclosures Rules

Governance & Sustainability

- OAL Approves CARB's Initial Regulation, Locking In November 10, 2026 SB 253 Reporting Deadline
- Enviro Marketing Lessons From NY Greenwashing Ruling
- 5 Strategies for Effective AI Governance
- 5 Strategies to Strengthen Corporate Governance
- 5 Strategies for Addressing Climate Variability and Extreme Weather
- CARB Defers SB 253 Scope 1 & 2 Reporting Deadline by Three Months
- Another Nail in the Coffin: SEC Proposes Total Rescission of Climate-Related Disclosure Rules

Reincorporating in Texas

- Delaware v. Texas: 5 Strategies for Evaluating Reincorporation Options
- Lessons from ExxonMobil
- Texas Reincorporation 101: Recent Developments and Key Considerations for Boards

©2026 Vinson & Elkins LLP **velaw.com**

THANK YOU

This content is intended for educational and informational purposes only and does not constitute legal advice or services. It does not constitute the provision of legal advice or services by any of the speakers or by Vinson & Elkins LLP.

www.velaw.com

@vinson-and-elkins

@vinsonelkins

@vinsonelkins

@vinsonandelkins

@vinsonelkinsllp7840

Austin Brussels Dallas Denver Dubai Dublin Houston London Los Angeles New York Richmond San Francisco Tokyo Washington